ment of the equipment on the basis that the subcontract was not frustrated and at the same time successfully mount a defence against the plaintiffs' claim for payment of the same equipment on the basis that the supply contract was frustrated.

In the ultimate analysis, the submission of counsel for the defendants was based on a false characterization of the issue. The issue is not whether the existence of the Gateway Project was the foundation of the supply contract. The issue is whether the defendants' obligation under the supply contract had been rendered impossible or radically different from that which they have agreed to perform by the occurrence of an event which was not within the contemplation of the parties and not due to the fault of either party.

The suspension of the Gateway Project resulting from the determination of the main contract and with it the termination of the subcontract was the very contingency which the defendants had provided for in cl 2 of the subcontract. There was no triable issue on this point.

For these reasons, I was of the view that the circumstances of this case did not require the intervention of the court to impose a more just and reasonable solution than to give judgment for the plaintiffs, which I did.

Order accordingly.

Solicitors: *Chu Chan Gan & Ooi*; *Wee Swee Teow & Co.*

Reported by *Ng Sheau Jiuan*

BRUNEI REPORTS

Public Prosecutor v Sanli bin Sunggoh & Anor

HIGH COURT (BANDAR SERI BEGAWAN) – CRIMINAL TRIAL NO 3 OF 1988
ROBERTS CJ AND CAIRD J
9-11, 13-18, 20, 22-24 AND 29 AUGUST 1988

Criminal Law – Gang robbery – Murder in the course of committing gang robbery – Causing grievous hurt in the course of committing gang robbery – Provocation – Motive – Whether necessary to establish it – Co-defendants – Sentencing – Mitigation – Circumstances to be considered – Penal Code, ss 299, 300, 391, 395, 396 & 397

Evidence – Criminal trial – Co-defendants – Confession – Whether may be used against co-defendant – Evidence Act (Cap 108), s 30

The defendants each faced two charges. The first charge against both defendants was that they had committed gang robbery and that in the commission of it the murder of one Ong Hong King (who was the son of one Ong Cheng Ham also known as Jaham) was committed by one of them and that thereby they had committed an offence punishable under s 396 of the Penal Code. The second charge against both defendants was that they had committed gang robbery and that at the time of committing the said robbery they had caused grievous hurt to one Ong Cheng Ham and had thereby committed an offence under s 395 read with s 397 of the Penal Code and punishable under s 397 of the Code.

The evidence tendered included a separate confession made by each defendant to a magistrate. Both defendants also gave evidence in the witness box. The first defendant's defence generally was that he was desperate to settle his debts outstanding to the defendants' employer, one Zain, and therefore decided to rob Jaham. He discussed the matter with the second defendant and both he and the second defendant knew that they would be taking knives into the car in which they were to take a lift from Jaham and his son. The first defendant said that he produced a knife while he and the second defendant were in the car and held it to the ear of the son in order to frighten him and not to kill him. The first cutting of the son was therefore an accident and occurred when the son turned his head unexpectedly. Similarly, he alleged that the other wounds on the body of the son were all the result of a struggle in the car and caused accidentally.

The second defendant told a different story. According to him, he was surprised to see the first defendant attack the son and use a knife as he did not know that knives had been taken into the car. He denied that he caused any of the wounds to the father, though he admitted that he picked up a knife, because he thought the father, whom he saw to be bleeding profusely, might attack him. Each of the defendants asserted that what he said in evidence was true whenever this conflicted with something contained in a statement made by him to a magistrate, since he only made this either because the police had coached him or because he was afraid of them.

It was submitted for the first defendant that the higher penalty provided by s 397 of the Code may only be inflicted on an offender who actually uses a deadly weapon, or causes or attempts to cause death or grievous hurt.

Held, convicting both accused on both charges:

(1) As on the evidence, the first defendant had not hit the father, he was excluded from the operation of s 397 of the Code. He could be found guilty of gang robbery, but not an offence which carries with it the punishment prescribed by s 397 of the Code, as the second defendant can, since it was he who, during the gang robbery, caused grievous hurt to the father.

(2) It is not necessary for the prosecution to establish any motive for a robbery or a murder. It is, however, desirable to do so if possible. In this instance, on the evidence of the father alone, the motive must have been robbery. This was confirmed by each of the defendants in their statements to the police.

(3) The rule at common law is that a statement made out of court by one defendant, if not in the presence or hearing of another, can only be evidence against the defendant who made it and not against the other. On the other hand, anything which is said in the witness box by a co-defendant is evidence against both himself and a co-defendant, though such evidence should be examined with care since the desire of one defendant to blame the other may well be the reason for evidence in court by one co-defendant which incriminates the other. This, however, is not the Brunei law, which confers on the court, in some circumstances, a discretion to take the confession of one co-defendant against the other in accordance with s 30 of the Evidence Act (Cap 108). There was no reason why this section should not be given effect to, though it was not necessary to do so in this case, rather than giving effect to the English rule. The statements made by each defendant to different magistrates in the instant case were voluntary and in accordance with s 117 of the Criminal Procedure Code.

(4) On the evidence, both of the defendants were lying, and were doing so because they were separately guilty of each of the offences charged (save that the first defendant could not be liable to punishment under s 397).

(5) On the first charge therefore, each of the defendants was sentenced to death. As for the second charge, the first defendant's evidence that he was labouring under substantial stress as a result of continual pressure by his employer could not, in law or fact, amount to provocation for what the first defendant did. Similarly, it could not be regarded as being a mitigation of the serious injuries which were suffered by an old man and the attack which took place upon him. The court was prepared to regard both defendants as effectively having no previous convictions since the only one, which the first defendant was subject to, was a conviction for which he was sentenced to eight days' imprisonment in 1983. The court would give them both such credit as was proper for being men of good character. This, however, was a very grave attack on a very old man and it was committed with the intention of robbing him of whatever he was carrying and had been planned for at least some time. On the second charge, therefore, the only proper sentence was one of 15 years' imprisonment for each defendant.

Cases referred to

1 *Dambarudhar Injal* v *State* AIR 1951 Ass 143 (folld)
2 *PP* v *Neoh Bean Chye* [1975] 1 MLJ 3 (folld)
3 *Po Myaing* v *Emperor* AIR 1920 LB 116 (folld)
4 *R* v *Duncan* (1981) 73 Cr App R 359 (folld)
5 *R* v *Donaldson* (1976) 64 Cr App R 59 (folld)

Legislation referred to

Criminal Procedure Code ss 117, 239
Evidence Act (Cap 108) s 30
Penal Code ss 299, 300, 378, 390, 391, 395, 396, 397

Magdalene Chong (Mrs) for the Public Prosecutor.
Feridahanam Abang Zen for the first defendant.
Douglas Lind for the second defendant.

Cur Adv Vult

Roberts CJ (delivering the judgment of the court): The defendants each faced two charges at the outset of the trial. Mrs Chong, who appeared on behalf of the Public Prosecutor, sought to amend the first charge, so as to include in it the name of the murdered victim, Ong Hong King. Counsel for the defendants did not object. We agreed that it should be amended accordingly, so that the two offences, with which the defendants were charged, then read as follows:

First charge against both defendants

That you, on 15 October 1987, at about 12 noon, at the road leading to the entrance of Lot No 777/88/PTB/TOL Pentemak Lembu Ayam, Kampong Belimbing, Jalan Sungai Akar, Brunei Darussalam, committed gang robbery, and that, in the commission of that gang robbery, the murder of Ong Hong King was committed by one of your number and you have thereby committed an offence punishable under s 396 of the Penal Code.

Second charge against both defendants

That you, on 15 October 1987, at about 12 noon at the road leading to the entrance of Lot No 777/88/PTB/TOL Pentemak Lembu Ayam, Kampong Belimbing, Jalan Sungai Akar, Brunei Darussalam, committed gang robbery and that, at the time of committing the said robbery, you caused grievous hurt to Ong Cheng Ham and thereby committed an offence under s 395 read with s 397 of the Penal Code, and punishable under s 397 of the Penal Code.

The law

The prosecution must prove that each of the defendants is guilty of the offences charged beyond reasonable doubt. Throughout our judgment, if we express ourselves as satisfied or sure or say that something has been proved or that we have no doubt, we should be taken as intending, in each case, to mean that the fact has been proved beyond reasonable doubt by the prosecution, on which the burden lies throughout.

In the first charge, it is alleged that both defendants took part in gang robbery during which murder was committed, contrary to s 396 of the Penal Code, an offence which brings with it the penalty of death. To succeed in a charge under this section, the prosecution must establish the following matters:

(a) that two or more persons were conjointly committing robbery;
(b) that the robbery was done in circumstances amounting to gang robbery;
(c) that during the course of this gang robbery, murder was committed by at least one of those committing gang robbery – see *Dambarudhar Injal* v *State*[1] and *PP* v *Neoh Bean Chye*.[2]

Gang robbery is itself defined by s 391 of the Penal Code as follows:

> When two or more persons conjointly commit or attempt to commit a robbery, or, where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to two or more, every person so committing, attempting, or aiding is said to commit 'gang robbery'.

Section 390(2) of the Penal Code reads:

> Theft is 'robbery' if, in order to the committing of the theft, or in the committing of the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Theft is defined by s 378 of the Penal Code as follows:

> Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Section 300 of the Penal Code sets out those occasions on which culpable homicide is murder:

(a) if the act by which the death is caused is done with the intention of causing death; or

(b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(c) if it is done with the intention of causing such bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death; or

(d) if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Section 299 of the Penal Code states that culpable homicide is committed by anyone who 'causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or the knowledge that he is likely by such act to cause death'.

In the second charge, both defendants are alleged to have committed gang robbery, which is punishable under s 395 with rigorous imprisonment for a maximum term of 30 years, with a fine and whipping in addition. This charge is linked with s 397, which both defendants also face:

> If, at the time of committing or attempting to commit robbery or gang robbery, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Not only is it necessary for the prosecution to prove, beyond a reasonable doubt, every element which is essential to a conviction under each relevant section of the Penal Code, the evidence on each charge, and against each defendant on each charge, must be considered separately. A finding of guilt against one of them on one charge does not mean that he was guilty of the other, nor that his co-defendant was guilty of either.

Evidence of the father

Ong Cheng Ham, also known as Si-Jaham or Jaham, is a man of 80, who, for the past 60 years, has been conducting business as a fishstall-holder, recently, at Gadong market. He is the surviving eye-witness of the attack which, if his evidence is accepted, took place upon him (the subject of the second charge) and upon Ong Hong King, his son (the subject of the first charge).

It is important, when considering the reliability and credibility of Ong Cheng Ham ('the father'), to remember that he had known both the defendants since at least the end of July in Gadong market, where they were all stall-holders. D2 had been to the father's stall on a number of occasions to change money, and the father had seen D1 in the market selling meat.

The father was insistent that his health had deteriorated substantially since the incident and that, at the time of it, he was perfectly capable of seeing both the defendants, as the persons who carried out the attack on him and his son. He was wearing his spectacles up to and during the early part of the attack and saw them clearly. This is not a case of a fleeting glance, since the father already knew both the defendants quite well. In addition, he had plenty of opportunity of observing them entering the car outside the bank and driving with him to the place where the attack occurred. It does not seem to us, therefore, that the father could possibly be mistaken. Either he is lying, or his version of events is substantially correct.

Even if it stood alone, we should have had no doubt that the story which he tells is a correct one in its essentials, and one which we can accept as both credible and reliable. However, in one important respect, which we shall mention later, we cannot accept his evidence. We are satisfied, contrary to what he says, that all the wounds inflicted on the son were delivered by D1 and none by D2.

In outline, the father described how, during the course of the morning, D2 changed with him a $100 note into $5 and $1 notes. This changing of money was common and was often carried out by the father at the market. On the same morning, 15 October 1987, D1 was seen in the market by one of the sons, Ong Hong Ann, who also saw D2 near the father's stall.

The father and one of his sons, Ong Hong King ('the son'), drove away together, at about 11.15 on the morning of 15 October 1987, in a car, registered number BF 1907, which was owned by the father. It stopped at the Malayan Bank, where a number of cheques was deposited in the bank by the son.

Whilst the son was in the bank, the father remained in the car. As he was sitting there, in the front passenger seat, D2, whom he described as the Filipino, in view of the latter's origin, came to him and said that he would like a lift to his house, which was not far from that in which the father lived at Kampong Subok. After some conversation, during which the father offered petrol to D2, the father agreed to give him a lift, though he was surprised when D1 also climbed into the car with D2. The car left soon afterwards with the four of them. The son was driving, with the father in front and D1 and D2 behind in the back seats. D1 travelled behind the son, who was driving, and D2 behind the father. After a short stop, where nothing of note took place, the car arrived at a road junction, leading to a farm and slaughter house, on Jalan Subok. Here the son asked the defendants to get out of the car. It was at this point that the attack occurred.

It is to be noted that the father did not see either of the defendants carrying anything when the latter entered the car. Nevertheless, according to him, the two defendants produced knives and stabbed him and the son.

D1, who was sitting behind the driver, stabbed the son. At more or less the same time, D2 used a similar knife to stab the father, who, as a result, was wounded in the neck. As soon as D1 stabbed the son, the father shouted to the son to get out of the car. Both father and son did so and tried to run away, though each of them had been wounded inside the car.

The father was chased by D2, who, first of all, slashed him with the knife which he was carrying and then cut open the rear pocket of the trousers which he was wearing and removed the wallet from it. The father was wounded on the side of the head, throat, left forearm, left hand and the right cheek. D2 used the same kind of knife as is used for cutting meat in the market where he worked.

After the father had jumped from the car, D1, who had taken over the driving of it, tried to run him down with the car, having made a U-turn and come back on the left-hand side of the road. The father rolled into the nearby drain and seems to have temporarily lost consciousness. However, shortly thereafter, he claimed that he was able to see his son being stabbed by both defendants and dragged into the car. The father climbed to his feet and chased them but the two defendants drove off with the son before the father could catch them.

The testimony of Ong Cheng Ham deals with the attack on the son as well as that on himself. The important part of his evidence, in this respect, is that he saw D1, who was sitting behind the son as the latter drove, stab him with a meat knife. The father then jumped from the car and was chased by D2, who inflicted further wounds on him. He thus saw little of the later attacks on his son and we cannot accept his testimony that he saw his son being stabbed by both defendants just before the car was driven away by D1. At this point, he was gravely injured and his glasses were broken, so impairing his ability to see accurately. We are, nevertheless, sure that the father was correct in saying that he saw both defendants drive away in BF 1907 with his son.

Much of the father's evidence about the attack on himself is equally relevant to that on the son. In particular, it shows that it was the defendants, and nobody else, who were responsible for the injuries suffered by himself and the son. The father's testimony is supported by the other evidence which is listed below and by the version of events given by both defendants, to the magistrates and in evidence, since neither denied his presence at the scene of the attacks. It is not certain as to when the son died, though we are satisfied that no further wounds were inflicted on him after the car left Jalan Subok.

Dr Pathmanathan testified that, in his view, death took place four to six hours before he examined the body at 4.45 pm on 15 October. This would put death at between 10.45 and 12.45 that day, which accords with the evidence of the father that the attack took place on Jalan Subok at about noon.

We have no doubt that, when the defendants dumped the body of the son at the side of the road, he was dead and that death occurred at some time between noon and that event. According to Dr Pathmanathan, there were 13 external injuries on the body, including two (numbered 10 and 11) which penetrated the chest wall and which, if untreated, would by themselves in the ordinary course of nature have caused death, one within about ten minutes of being inflicted.

Events after the attacks

Although the attack took place soon after noon on a reasonably busy road, nobody has been found who saw or heard the attack and workers at the farm nearby denied having done so. After the attack on him and his son, the father managed to make his way to the house of Staff Sergeant Sabtu bin Haji Limbang, which was close to where the attack had taken place. There, the father shouted for help and was taken home quickly to his family at his own request. The staff sergeant, who went close to the father, saw that he had a big wound on his neck and took him in his car to the father's house, where he was handed to the family.

One of the sons, Ong Hong Kiat, gave evidence that his father was brought to the house on 15 October 1987, and that he told his family that the youngest son was in trouble and had been taken away by people and stabbed by a knife. The father asked him and a younger brother to search for the son who had been taken. Before doing so, the witness saw that his father had been cut and that the latter's shirt was drenched with blood.

Although he failed to find his brother, Ong Hong Thien, another son, also alerted by the return of the father, was more fortunate. Having searched various areas, he finally went to Limau Manis with his younger brother and friend in BF 8669. Here, they took the wrong lane up a hill, finding the body of the brother, Ong Hong King, lying on the ground by the side of the road. The body was exposed in the open and not hidden in any way. The place, where the body was found, was on a road which is not busy.

The body of the brother was taken in BF 8869 to RIPAS in Bandar Seri Begawan, where he was examined by Dr Pathmanathan. It was identified there by Ong Hong Thien as that of his brother, Ong Hong King.

Dr Pathmanathan, the pathologist, carried out an autopsy on the body of the son. He described the various injuries to the son, finding the latter's body covered with stab wounds, at least two of which penetrated the chest and could have caused death. The knives, which were retrieved from the car, were, in his opinion, similar to those which caused these injuries. He was of the view that the person, who struck the blows which caused death, did so with the intention of causing death and that these were also intended to cause such bodily injury as was likely to cause the death of the son.

We agree with both opinions and are thus satisfied that whoever caused the death of the son was guilty both of culpable homicide under s 299 of the Penal Code and of murder as defined in s 300 of the Penal Code. This does not, of course, help us to decide who was responsible for the son's death. For that we have to look elsewhere, in particular to the evidence of the father and to the admissions made to magistrates by the two defendants, after their return from Labuan, and to the evidence they gave in court.

Meanwhile, the search continued for the car, BF 1907, which was missing because, although the body had been recovered, the car had not. Information reached ASP Haji Mohd Freddie, who was in charge of the investigation of the case, at about 10 pm on 15 October that BF 1907 had been found unattended at Kampong Danau, which is in the Limbang district of Sarawak.

The following day, 16 October, ASP Freddie, accompanied by other members of the Royal Brunei Police Force, went to Kampong Danau in Sarawak, where they found BF 1907 at the end of a road, facing Limbang, about ten feet from the edge of a river bank. On three places on the outside of the vehicle were red stains, which were subsequently swabbed but, although the pathologist was able to identify human blood, he was unable to group it.

Inside the car, and the driver's door which was not locked, were red stains on the front seat and a pool of red liquid, which looked like blood, on the floor. There was a sleeveless T-shirt with letters printed on it and two mats on the floor. In the boot of the car were two knives. ASP Freddie took possession of all these exhibits which were later sent for analysis.

ASP Freddie received information, on 20 October, that Mariah, the wife of Sanli (D1), had returned to Brunei Darussalam from Labuan, where she had been with her children. ASP Freddie interviewed her and received the keys of a pick-up truck, BH 1929, which belonged to Haji Mohamad Zain, the employer of both defendants, four $10 notes and a letter addressed to Haji Rino, as well as a gold bracelet (P26). The truck had been left in the square near the mosque in Bandar Seri Begawan.

ASP Freddie was informed on 21 October that the two suspects had been arrested in Labuan and at about 3.50 pm, the following day, 22 October, he arrived in Labuan, where he identified the two defendants in the lock-up from passport photographs, though he already knew D1, who had been an auxiliary policeman. On the same day, ASP Freddie attended the Sessions Court, where the judge endorsed a Brunei arrest warrant for execution in Labuan.

After this endorsement, ASP Freddie took from Omar (D2) M$498.60, S$50, B$11 and an American Express Gold Card, on which the words, 'Ong Cheng Ham', appeared with his signature. This was identified by the father, as having been stolen from his wallet during the attack at Jalan Subok. No property was recovered from Sanli (D1), who had, as mentioned above, already sent property to Mariah, his wife.

On the following day, 23 October, ASP Freddie and Sgt Major Roger took the defendants from Labuan, firstly to the Marine Base at Muara and, from there, to the Central Police Station in Bandar Seri Begawan, where they arrived at about 4.15 pm. According to the evidence of ASP Freddie, no complaints were made by either defendant that he had been ill-treated by any police officer in Labuan. Neither of the defendants had complained about being beaten by the Labuan police. He saw no injuries on the bodies of either of them.

On 24 October, he was informed that the two defendants wished to make statements to a magistrate and gave orders accordingly for this to be carried out. Subsequent-

ly, D1 made a statement to magistrate, Mr Steven Chong, and D2 to magistrate, Awang Sulaiman Haji Buntar. In each case, the statement contains what is, in effect, an admission by each defendant of his part in the two attacks, on the father and on the son.

Supporting evidence

Even if we did not accept the evidence of the father (and we have already stated that, in general, we do), there is other evidence which supports his description of what occurred about midday on 15 October last year and his identification of D1 and D2 as those responsible for the attack on himself and his son, though the nature of the statements and evidence has been such as to make much of this evidence unnecessary, since both defendants admit their presence when the father and the son were injured:

(a) According to Zain, neither D1 nor D2 returned to work on 16 October, or at any time thereafter.

(b) Mariah, the wife of D1, has testified that she and two of the children were uprooted without warning from their house by D1 and hurried across the border.

(c) Mariah recounted how, on the way to Sarawak, Omar (D2), who was sitting in the passenger seat in the front of the car, which was being driven by D1, said, 'We have killed Janam's son.' We have given no weight to his admission in the taxi to Limbang, since Mariah was uncertain as to this.

(d) D1, on the day of the attack on the father, drove the father's car, BF 1907. D1 had no reason to do so, that we are aware of, other than as a vehicle wrongfully seized.

(e) A gold bracelet was given to Mariah in Labuan by D1 (Sanli). It was identified by Ong Hong Ann, one of the sons, as having been worn by the deceased on 15 October, but as missing from the latter's body. Although D2 gave evidence that it was D1 who removed the bracelet, the taking of it by either defendant supports the father's story.

(f) Ong Cheng Ham identified his American Express Card. It was missing after the gang robbery. Before that, it had been in his wallet in his rear pocket. He had signed the card and identified his signature. It was taken from D2 in Labuan by Inspector Masseri.

(g) The father was wearing green sandals, which were found later at the site of the attack by Inspector Harun.

(h) Two knives were found by ASP Freddie in the boot of the father's car, which had been abandoned by the riverside inside Sarawak. Both accused used knives of this kind in the market. The knives bore no fingerprints but each contained human blood of group 'B', the same as that of the son, but not the group of the father or of D1 and D2, all of whom were group 'O'.

(i) The defendants left the meat stall with some of the meat unsold. They did not return to finish the sale nor hand over the takings to Zain that evening. Nor were they paid for the first half of October, though Mariah was paid for that period about a week later.

(j) The defendants had the use of Zain's pick-up truck, no BH 1929. This they left by the mosque in Bandar Seri Begawan. The keys were handed to ASP Freddie by Mariah, the wife of D1.

Effect of evidence of father

On the evidence of the father alone, the prosecution has established, beyond reasonable doubt that:

(a) theft was committed directly by D2 against the father when D2 removed the father's wallet from the latter's hip-pocket. (We reject as untrue D2's evidence that he picked up the wallet when it fell out of the father's pocket and at the time had no intention of stealing it);

(b) D1 is also guilty of theft because he stabbed the son, drove the car at the father and helped in the attack on the son, all steps intended to further the theft by D2. In spite of the fact that no threat was uttered by either of the defendants, cash, an American Express Card and a wallet were taken from the father against his will and all the elements of theft from the latter were present (see s 378 of the Penal Code);

(c) the theft was robbery, as defined by s 390(2) of the Penal Code, since D2, 'in order to the committing of the theft', voluntarily caused hurt to the father;

(d) two or more persons, ie both defendants, were conjointly committing this robbery, so that it became a gang robbery (s 391 of the Penal Code); since we accept the evidence of the father that both defendants attacked father and son at about the same time with the object of robbing the father;

(e) at the time of committing the gang robbery, a deadly weapon was used by D2, causing grievous hurt to the father, which offence is punishable under s 397 of the Penal Code.

Grievous hurt is defined by s 320 of the Penal Code. As to this, we accept, without hesitation, the opinion of Dr Babu, who treated the father, that the injuries, which the father suffered as a result of the attack on him, amounted to grievous hurt and so fall within the definition set out in that section. She went so far as to say, and this we accept, that the father's life was in danger when he sustained these wounds.

Furthermore, we are also satisfied that both defendants, at the time of committing the gang robbery on the father, used a deadly weapon, namely, a knife. However, D2 actually cut the father with a knife and D1, though he

took part in the gang robbery of the father, did not physically injure him.

We have seen the two knives concerned. From the evidence of D1, P5 belonged to D1 and P6 to D2. Although it is uncertain as to which defendant held which knife, and no fingerprints were found on either, we are left in no doubt that each is a 'deadly weapon' since each knife was capable of inflicting death. Dr Pathmanathan was of the opinion that the knives were similar to the one which could have caused the wounds to the son.

Counsel for D1 submitted that the higher penalty provided by s 397 of the Penal Code may only be inflicted on an offender who actually uses a deadly weapon, or causes or attempts to cause death or grievous hurt: see *Po Myaing* v *Emperor*.[3]

These authorities, not disputed by the prosecution, exclude D1 who, as we find, did not hit the father, from the operation of s 397. Thus he can be found guilty of gang robbery, contrary to s 395, but not of an offence which carries with it the punishment prescribed by s 397, as D2 can, since it was he who, during gang robbery, caused grievous hurt to the father.

Forensic evidence

The forensic evidence, which we accept, was largely given by Mr Teoh of the Singapore Department of Scientific Services. He received, in all, 13 envelopes from ASP Freddie in December 1987, and carried out an examination of all of them for blood.

We are satisfied that the various exhibits were properly guarded and that the necessary chain of evidence has been established by the various police officers. They either gave evidence themselves or their witness statements were read aloud in court under s 117B of the Criminal Procedure Code.

One aspect of Mr Teoh's evidence is that D1 and D2 were each shown to have blood group 'O', which was the same as that of the father, but not of the son who had blood of group 'B'.

The two knives, exh P5 and P6, both carried blood which was diagnosed as being of group 'B', though we do not overlook the evidence that they may have been in contact in the boot of the car.

Similarly, the soaked felt mat and the black plastic slippers were also found to be of blood group 'B', a finding which is consistent with the son's body resting there, as D2 described.

The forensic evidence can therefore not be said to be conclusive. It shows that there were articles in the car which were contaminated with a blood group, to which the son belonged, but which was not the group of either defendants or of the father. There were no fingerprints found on the car, or on the knives. It was explained that this was not unusual and that they might have deteriorated quickly in a car left in the open. In any event, since none was found, fingerprint evidence is of no assistance.

The forensic evidence, however, does support the story of the father, to some degree, since it shows that the car, which belonged to him, contained blood of the son's group, and that the knives, which could have inflicted the wounds on the father and son, were stained with blood of the same group as that of the son, though this was not the group of the defendants or of the father.

Motive

It is not necessary for the prosecution to establish any motive for a robbery or a murder. It is, however, desirable to do so if possible. In this instance, on the evidence of the father alone, the motive must have been robbery. This was confirmed by each of the defendants in their statements to the police.

The father, on his own evidence, was known as a man of substance, who often acted as banker to fellow stall-holders in the market. This must have been known to both defendants, who worked near to him there for about 2½ months.

It is, no doubt, unusual for persons determined on robbery to select as victims those who already know them and without previously finding out how much the intended victims are carrying by way of money or valuables, though there is some evidence that the defendants tried to find out how much was being carried by the father. Furthermore, the father was attacked on a road which, at certain times of the day at least, contains a fair amount of traffic. And the body of the son was later dumped on a track in the open and not concealed in the bushes which were nearby.

These are facts which we have taken into account in considering what happened at the road junction in Jalan Subok on 15 October 1987, but we believe that the recklessness of the defendants can partly be explained by their belief that they had left the father for dead so that, with the later death of the son, there would be no eyewitnesses left alive. We do not accept the evidence of the defendants that they saw the father standing by the roadside as they drove away. We are satisfied that they thought that he was dead.

Admissions

The rule at common law is that a statement made out of court by one defendant, if not in the presence and hearing of another, can only be evidence against the defendant who made it and not against the other. For this reason, the statement of D1 to a magistrate is not evi-

dence against D2 at common law; nor is that of D2 to a magistrate evidence against D1. On the other hand, anything which is said in the witness box by a co-defendant is evidence against both himself and co-defendant, though such evidence should be examined with care since the desire of one defendant to blame the other may well be the reason for evidence in the court by one co-defendant which incriminates the other.

This, however, is not the Brunei law, which confers on the court, in some circumstances, a discretion to take the confession of one co-defendant against the other in the following terms, to be found in s 30 of the Evidence Act (Cap 108):

> When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

We see no reason why we should not give effect to this section, though it is not necessary to do so in this case, rather than to the English rule.

For the record, we admitted the statements which were made by each defendant on the morning of 24 October to different magistrates, that of D1 to Mr Steven Chong between 0910 and 1025 and that of D2 to Awang Sulaiman Haji Buntar from 0915 to 1125. We were satisfied that, in each case, the prosecution had established that the statements were voluntary, in accordance with s 117 of the Criminal Procedure Code.

Furthermore, we were satisfied that, if there had been any threat or inducement by police officers, which we do not accept, this would have ceased to have effect. Both defendants were fully cautioned by the magistrate concerned; each stated that there had been no threat, inducement or promise to him by any police officer; each replied that he was making a statement of his own free will.

Statement of D1 to the magistrate

The statement made by D1 to the magistrate describes how he and 'one of my friends', having parked a pick-up in front of the mosque, entered a car driven by Ong Cheng Ham's son. At Jalan Subok, Sanli (D1) asked the driver to stop the car. 'My intention was to kill him,' he added, but the car went on after stopping briefly. Later, the car stopped at the front of the cattle compound on Jalan Subok. Here, Sanli went on:

> I immediately stabbed the driver. I stabbed the left side of his neck. He resisted. Then I stabbed his abdomen. He ran out of the car. When I saw the blood, I pitied him. Meanwhile, my friend was with Ong Cheng Ham outside the car. I did not observe them. I took over the driving and chased after his son. When I got near him, he fell down. He was bleeding profusely. I carried him into the car. I put him on the front passenger seat. When I was carrying him into the car, my friend came. My intention was to take the son to hospital. When I saw that he did not show any signs of life, I was frightened. I drove off. My friend sat in front with the deceased. We threw the deceased. I drove up to a hill at Kg Masin, took the deceased down.

Sanli thereafter describes how he fetched his wife and drove to Limbang and to Labuan. He later explains the killing by saying, in his statement:

> I was in distress. I had a problem at the time. This is connected to my work selling meat. Everyday, after selling meat, my employer would scold us.

Sanli then describes how he fell into debt with his employer, how he worked up to 18 hours a day, how he borrowed to pay debts and how badly paid he was. He concluded his statement:

> When we could not get any more loans and there was no other alternative, we started getting evil thoughts leading to this thing happening. We wanted to get money to cover the debts so that we would not be scolded.

This statement is therefore an unqualified admission, not only that D1 was in the car when the father was attacked, but that:

(a) he stabbed the son in the neck and the abdomen;
(b) the son was bleeding profusely;
(c) the son was pulled into the car;
(d) as the son showed no signs of life, he was put out of the car at Kg Masin.

Sanli (D1) does not deny that he took part in the murder of the son. He explained it, and the attack on the son, as due to a wish to get the father's money, to repay debts owed to his employer.

Even if all D1's allegations against his employer are correct, this cannot amount, in law or in fact, to any lessening of his responsibility for the attack. It cannot be a defence, as D1 seems in his statement to suggest, for a man charged with causing grievous harm to A and the murder of B to show that he had been badly treated by C. Therefore, even if all that D1 says, in his statement, is true, it cannot excuse his attack on the son at Jalan Subok, since it cannot amount to provocation. We are satisfied that the prosecution has proved that the murder of the son which took place was not caused by any provocation of D1 – see s 300 of the Penal Code, Exception 1.

Statement of D2 to the magistrate

The statement of D2 admits, 'For two nights we had been planning to rob and kill Jaham and his son.' D2 then describes how he and D1 followed Jaham and his son when they left the market, with D1 carrying two knives in a bag.

D2 asked Jaham for a lift and he and D1 climbed into the car. When the car reached the turn off Jalan Subok to the slaughter house and stopped, D1 slashed the son's neck. D1 went on:

> (I) recalled that about three months ago, the son grazed me and damaged my motorcycle; my hand and leg were cut. Because of this, I got an ill-feeling towards them. So I joined and slashed the father. The father was wounded at the right side of his neck. The son got out of the car and ran away for about 30 metres. Jaham also got out of the car. I also got out.

D2 next describes how Jaham pleaded with him, but D2 referred again to the accident and Jaham's failure to pay compensation. 'I then hit his head with a knife. I took his wallet because I needed money for my passage in order to escape. I then slashed him on his cheek.'

D2 then saw D1 lift the son and put him on the front passenger seat. Later on, the son was left by the side of the road and D1 drove, having collected his wife and children, to the river bank in Sarawak. On the way, D2, in answer to a question from the wife of D1, replied, 'We killed two persons.' Sanli did not answer.

At the river, D2 took out the Malaysian currency and the American Express Card from the wallet he had taken from Jaham. The two knives which 'we used to stab them' were left behind in Jaham's car.

Thus the statement of D2 admits:

(a) that he took part in the gang robbery of Jaham;
(b) that he assaulted Jaham himself, delivering a number of blows with a knife;
(c) that the son was with Jaham and died as a result of wounds inflicted by D1 in the course of the gang robbery;
(d) the object of the robbery was to steal money from Jaham, the father;
(e) it had been the intention of D2 to kill the son in order to rob the father.

D2 suggests that he became angry with Jaham because the latter had failed to pay to him (D2) any compensation for an accident which he says occurred about three months earlier between himself and another of the sons of the father. Even if this were so, and the story told by D2 were entirely correct in this respect, such an incident could not amount to provocation, in law or in fact, such as would justify D2 in attacking the father. So we are satisfied that the prosecution has established that there was no provocation of D2 such as might reduce the latter's responsibility for the murder of the son.

In any event, this defence was *not* pursued by D2 in the witness box, where he admitted that it was not a serious matter. He did not there suggest that this was the reason why he had attacked the father, nor, as his counsel urged upon us, that the injuries were inflicted on the latter for revenge and not in order to rob.

Evidence for D1

Each of the defendants elected to give evidence from the witness box and to be cross-examined.

D1 described in examination-in-chief how his working day began at about 3.30 am and continued until as late as 9 pm. From the time when he started to run Hj Zain's stall at Gadong market on 29 July 1987 until the day of the attack, 15 October 1987, he had had, he said, constant rows with his employer, who had often accused him of taking money and of not being clever at selling the meat. He often had to borrow from friends to pay off accounts which were still owing, though he did not know the names of those who lent him money.

On the day in question, he did not change any money with the father and did not know if D2 did so. When he left the market, he went to Bandar Seri Begawan to try to borrow money to pay to Haji Zain but failed to get any. It was after that, D1 said, that 'we planned to rob Si-Jaham because we could not locate our friends to borrow money'.

D1 denied that part of Omar's statement to the police which admits that D2 and D1 had been planning to rob Si-Jaham and his son for two nights. D1 had said, in his statement to the magistrate, that he meant to kill Si-Jaham when the car stopped for the first time. He insisted in evidence, however, that this was not true and that Sgt Major Roger had told him to say that. According to D1, he was still thinking whether he should rob Si-Jaham or not when the car stopped near the junction to the cattle farm. D1 admitted that he took out a knife and directed it towards the son's neck. He intended to frighten the son, who 'suddenly jerked and the knife got him'. He next described how both father and son grabbed him by the hand, after which the father and D2 dismounted from the car. There was a struggle in the car, during which D1 'wounded the son at the front', though he was not sure where. D1 dismounted, as did the son. D1 climbed into the driver's seat and followed the son in the car, though he did not try to run the father down as the latter had claimed. He saw D2 chasing the father and hitting him on the head with his knife. After this, he carried the son into the car. He denies seeing D2 stab the son. D1 did nothing to help the father because he saw another car behind the latter and thought that those in it would do so. D1 got into the car and drove off. The son looked dead to him. As he was frightened, he took the son's body to Jalan Masin, where it was left by the side of the road.

The remainder of the evidence of D1 in chief accorded closely with that given by the prosecution witnesses, save that he asserted that the bracelet which he handed to Mariah, his wife, had been given to him by D2 and that he did not know where it came from.

Mr Lind cross-examined D1 at length. He established that D1 had worked for Zain for some time and that D1 was solely responsible for any shortfall in the amount of money collected at the stall. D1 denied that there had been any conversation between him and D2 before they both left the market on 15 October about killing and robbing Si-Jaham and his son. However, D1 agreed that he did discuss the matter with Omar outside the bank, suggesting that the money, which was needed, could be obtained by robbing Si-Jaham, as the friends had failed to produce the money. According to D1, he took with him, into the father's car, a bag containing the knives which were used in the attack, though he did not know if Omar saw it. Before the attack, he and Omar took the knives out of the bag. He did not think that the father could have sustained the wounds in the back of the neck by accident and admitted that he stabbed the son. He added that it was possible that his plan to rob the father was known only to himself and not to D2, as the latter may have thought that he was not being serious when he mentioned that he (D1) proposed to rob the father.

In cross-examination, D1 conceded that he was in financial difficulties on 15 October and that he was desperate for more money to settle his debts to Zain. He denied that he and D2 decided to rob the father until they discussed the matter outside the Malayan Bank. He agreed that Omar knew about the knives in the bag and that the bag was placed between them in the car. He insisted that, when he slashed the son's neck, he had no intention of killing him. He only 'tried to frighten him'. He denied that, when the son resisted, he stabbed him many times.

D1 denied that he deliberately inflicted the many injuries found by the pathologist on the son and insisted that there was a struggle when father and son both held his hands. There was no agreement between him and D2 that he (D1) would deal with the son and D2 with the father. D1 admitted that he used the car to chase the son, who was bleeding badly when D1 caught up with him. He put the son into the front of the car by himself, but was not helped by Omar. He saw Omar slash the father on the head, but did not take part in that assault. He did not take the son to RIPAS, because he was frightened, but left the body near Kg Masin where it would be found.

In re-examination, D1 insisted that he did not intend to kill either the father or the son, and denied that he suggested to D2 that this should be done. There was a sudden struggle in the car, though he did not intend any struggle to take place. D1 was asked some further questions by the court. He insisted that it was normal to have two knives in the bag. He admitted that he intended to give himself up to the police before he made a call to Brunei on the day of his arrest in Labuan. D1 agreed that the pathologist had found 11 cuts or stab wounds on the body of the son and that D2 had not inflicted any wounds on the son, only on the father. D1 was sure that the son received his 11 wounds by accident.

Evidence for D2

Omar bin Usman Mohammad (D2) described how he had worked in the market from 29 July, but agreed that it was Sanli who had to take the proceeds each day to Zain.

Up to 15 October 1987, he and D1 had never discussed any plan to rob the father and the son. It was not correct that, on 15 October 1987, he went to the father's stall to see if he had money nor that he had any conversation at all with Ong Hong Chin.

On that morning, he left the market with Sanli, who told him that he had been instructed by Zain to collect a debt. He did not see Jaham leave the market with one of his sons. He insisted that various items in his statement to the magistrate, which conflicted with his evidence, were there because the police had taught him and he was afraid of them. He did not know, when the pick-up stopped, that Sanli had decided to rob the father. Nor did he see D1 carrying anything or placing a bag on the floor of the car between them.

When he saw D1 put an arm-lock on the son with one arm and threaten him with the knife in the left hand, he was surprised. He had not seen D1 take the knife out of the bag and had seen no knife before he saw one held to the neck of the son. A struggle ensued between the father, the son and Sanli. He saw that the father had a wound in the neck, but did not know how he had sustained it. While the struggle went on, he kept quiet and did nothing, as he did not know why Sanli was acting as he did. He got out of the car first, followed by the father. His admission to the magistrate that he had slashed Jaham was not correct. Nor was the evidence of D1 to the same effect. When D2 got out of the car, a knife 'fell out of the car'. He picked it up because Jaham wanted to attack him.

According to D2, he pushed Jaham into a ditch to save him, when D1 drove a car at Jaham. The latter was wrong if he said that D2 had cut his back pocket and taken his wallet. D2 denied that he stabbed the son, as Jaham asserts in evidence. If Mariah says she heard him admit to having killed the son, she is wrong as he did not do so. He used money from Jaham's wallet, which he had found on the ground and picked up by mistake thinking it was his own, for the hire of the boat from Limbang to Labuan as he did not have sufficient money for this. D2 concluded by saying that his evidence was correct and that anything different which he said to the magistrate was due to his fear of the police.

He was cross-examined by counsel for D1. He denied taking part in the struggle in the car by slashing the father on the back of the neck. Nor did he slash him at the back of the head outside the car. D1 took the bracelet from the body and handed it over to D2 in Labuan.

When cross-examined by Mrs Chong, D2 insisted that what he told the magistrate on 24 October was not the truth and that he had said what he did to him because Sgt Major Roger had coached him as to what he was to say that morning. He was surprised when D1 produced a knife as he did not know what was happening and denies that he hit the father inside the car. He did not see who wounded the father, although he was in the car at the time. He was surprised by the struggle between D1 and the Ongs and got out of the car. He had no knife in the car. He picked up the knife, which fell out of the car, because he thought that the father was going to attack him. He did not inflict any injuries on the father outside the car. He did not leave the father because he thought he was dead, as he stood up after he had fallen into the drain.

D2 next described how he sat in the front seat with the son, until at Kampong Masin, the body was taken out of the car by Sanli. D2 himself did not touch it, before or during the journey there, nor in the dumping of the body by the road. He did nothing to help the son because he was afraid, although he was worried about him.

D1 took the bracelet from D2 in Labuan, though D2 did not know where it came from. He threw away Jaham's wallet at the river crossing. He did not report the accident to his motorcycle as it was not a serious one. To the court, he denied that it would have been possible for him and D1, when alone in the pick-up, on the evening of 13 and 14 October, to have planned to rob Jaham. He did not know why D1 wanted a lift to Jalan Subok and was only following the latter's orders when asking for one.

He concluded by alleging that the old man was lying, when he said that D2 had caused his wounds; that Sanli was lying when he gave evidence to the same effect; and that his admission to the magistrate that he slashed Jaham was in accordance with police instructions.

Defence generally

In effect, D1's defence is that, because he was desperate for money to settle the debts outstanding to Zain, he decided to rob Jaham on the morning of 15 October. According to him, the matter was discussed outside the Malayan Bank and both he and D2 knew that knives were being taken in the car driven by the son.

He did, however, produce a knife and hold it at the ear of the son in order to frighten him and not to kill him. The first cutting of the son was therefore an accident and occurred when the son turned his head unexpectedly. Similarly, the other wounds on the body of the son, were all the result of the struggle in the car and caused accidentally.

D2 told a different story. He denied any prior knowledge of a plot to rob Jaham, let alone to kill him or his son. According to him, when the car stopped, he was surprised to see D1 attack the son and use a knife, as he did not know that knives were being taken into the car. He denies that he caused any of the wounds to the father, though he admits that he picked up a knife, because he thought the father, whom he saw to be bleeding profusely, might attack him.

Thus each defendant admitted in evidence, as he did in his statement, that he was present when the two attacks occurred, admissions which greatly narrow the dispute between them and the prosecution.

Each of the defendants asserts that what he said in evidence was true whenever this conflicted with something contained in a statement made to a magistrate, since he only made this either because the police had coached him or because he was afraid of them.

We have had no hesitation in admitting the statements as voluntary. Equally, we are satisfied that full weight should be given to these statements, which in each case followed a full caution and a warning of the use which might be made of them, by a magistrate in the absence of the police. In so doing, we have considered each statement as a whole, since each is partly incriminating and partly exculpatory, as the defence suggests: see *R* v *Duncan*[4] and *R* v *Donaldson*.[5]

We realize that the statement and evidence of each defendant must be considered with some care and suspicion, since each of them may well have an interest in transferring blame to the other. We have borne this possibility in mind in considering their evidence.

The evidence of both defendants in the witness box has also been given full weight. We are nevertheless satisfied that both of them are lying, and are doing so because they are separately guilty of each of the offences charged (save that D1 cannot be liable to punishment under 397). We are sure that the prosecution has proved each defendant to be separately guilty of each offence charged. We reject the defences advanced in evidence by each defendant as untrue. We accept, from the statements and the evidence of D1, that there was an agreement between him and D2 that they would rob the father and the son in order to steal from the father the money needed to pay those who were in debt to Zain.

D1's evidence is that such an agreement was only made with D2 as they were waiting in the pick-up on the morning of 15 October. It does not matter whether the

plan to rob the father and son became a firm one on the morning of 15 October or earlier, though it seems likely that it was agreed upon at least before the defendants left the market on that date. In any event, we find that there was such an agreement before the father's car left the Malayan Bank and D2 was fully aware both of the agreement and of the decision to use knives to carry out a robbery of the Ongs. In our judgment, D1 would never have produced a knife and stabbed or threatened the son, unless he had first ensured that D2 would support what he was to do.

It may be that the defendants did not, at first, intend to do more than to frighten the Ongs by a display of knives. If so, this changed as soon as these weapons were produced in the car, as we find they were by both defendants, who immediately attacked both father and son. At that stage, we find, as a fact, that each of them intended to kill, D1 the son and D2 the father. D1 attacked the son, causing 11 stab and cut wounds, whereas D2 assaulted the father, who suffered knife wounds and serious injuries which placed his life in danger. Neither of the victims was given a chance to hand over any property in his possession. Each was attacked before he could do so by one of the defendants.

It is difficult, therefore, to avoid the conclusion, which we are satisfied is the only one, that the defendants both intended to kill the victims, before the attack on the Ongs began. We have therefore had no hesitation in convicting both the defendants of s 396 of the Penal Code, being satisfied that all the elements of such an offence have been established against each of them considered separately.

On the first charge, therefore, in accordance with s 239 of the Criminal Procedure Code, we sentence each of the defendants to death and direct that they be hanged by the neck until they are dead.

We will hear submissions as to sentence on the second charge, on which we find both defendants guilty under s 395 of the Penal Code of gang robbery. The provisions of s 397 of the Penal Code apply to D2 only.

[The court then went on to deliver judgment on sentence on the second charge.]

Roberts CJ (delivering the judgment of the court): The first defendant has been found guilty of gang robbery contrary to s 395 of the Penal Code. The maximum punishment of this is imprisonment for a term not exceeding 30 years, with a fine and whipping in addition.

The second defendant, however, has been found guilty not only of that offence but also of an offence which falls within s 397 of the Penal Code. The latter section provides that if at the time of committing a gang robbery the offender uses a deadly weapon, the imprisonment with which he shall be punished shall not be less than seven years. We have found that, in this instance, the second defendant did use a deadly weapon and that he consequently falls within s 397 of the Penal Code.

We have given full weight to the various matters which have been urged upon us. Miss Abang Zen, on behalf of the first defendant, reminded us that he was labouring under substantial stress, as a result of continual pressure by the first defendant's employer. As to this, we have already expressed the view in the course of our judgment that this cannot, in law or fact, amount to provocation for what the first defendant did. Similarly, we do not regard it as being a mitigation of the serious injuries, which were suffered by an old man, and the attack which took place upon him. For the second defendant, Mr Lind has reminded us of the offender's age. He is only 23½ and had no previous convictions.

We are prepared to regard both defendants as effectively having no previous convictions, since the only one, which the first defendant was subject to, was a conviction for which he was sentenced to eight days' imprisonment in 1983. We give them both such credit as is proper for being men of good character.

This, however, was a very grave attack on a very old man and it was committed with the intention of robbing him of whatever he was carrying. As we have said earlier, this was an attack that had been planned for at least some period by the two defendants.

We can see no reason, in view of the conclusions that we have reached as to the robbery of the father being a joint enterprise, for distinguishing between the two defendants in regard to the punishment that we should impose, since, in both cases, we would regard a sentence off seven years as wilfully inadequate for what occurred.

We are prepared to take into account the extent to which both the defendants have already been in custody in Brunei since 22 October 1987. Nevertheless, we have decided that the only proper sentence which we should impose is one of 15 years' imprisonment on each defendant, the period to run from 22 October 1987, in each instance.

Order accordingly.

Solicitors: *DF Abang Zen*; *Douglas Lind & Co.*

Reported by *PS Ranjan*